



U.S. Department  
Of Transportation  
**Federal Highway  
Administration**

*Statewide  
programmatic  
agr*

**Utah Division**  
2520 West 4700 South, Ste. 9A  
Salt Lake City, UT 84118-1847

June 12, 2007

File: Section 4(f) *De Minimis*

Mr. Wilson Martin  
State Historic Preservation Officer  
Division of State History  
300 South Rio Grande Street  
Salt Lake City, Utah 84101

**Subject:** Section 4(f) De Minimis Determination; Pursuant to SAFETEA-LU Section 6009  
In Conjunction with Section 106 Programmatic Agreement Among the Federal Highway  
Administration, the Advisory Council on Historic Preservation, the Utah State Historic  
Preservation Officer, and the Utah Department of Transportation

Dear Mr. Martin:

This letter was prepared in response to the FHWA December 13, 2005 Guidance regarding Section 6009 (a) of the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity: A Legacy for Users (SAFETEA-LU) Act Pub. L. 109-59. Section 6009 allows increased flexibility with respect to minor transportation impacts to Section 4(f) properties, including historic properties. It simplifies the processing and approval of federally funded transportation projects that have a *de minimis* impact on lands protected by Section 4(f). For historic properties, a finding of *de minimis* impact on a historic site may be made by the FHWA when Section 106 consultation results in the *written* concurrence of the SHPO with the determination of "no adverse effect" or "no historic properties affected".

Public Law 109-59 (SAFETEA-LU) has no new Section 106 implications other than the requirement for written SHPO concurrence with Section 106 findings of effect for individual Section 4(f) properties. It does require FHWA to notify the SHPO of FHWA's intent to utilize the finding of "no historic properties affected" or "no adverse effect" for individual Section 4(f) properties as a basis for making a Section 4(f) *de minimis* use finding.

The December Guidance offers two specific points of relevant direction:

**Question B. How should the concurrence of the SHPO and/or THPO, and ACHP if participating in the Section 106 determination, be documented when the concurrence will be the basis for a *de minimis* finding?**

**Answer:** Section 4(f) requires that the SHPO and /or THPO, and ACHP if participating, must concur in writing in the Section 106 determination of "no adverse effect" or "no historic properties affected." The request for concurrence in the Section 106 determination should include a statement informing the SHPO or THPO, and ACHP if participating, that the FHWA or FTA intends to make a *de minimis* finding based upon their concurrence in the Section 106 determination.

**MOVING THE  
AMERICAN  
ECONOMY**



Under the Section 106 regulation, concurrence by a SHPO and/or THPO may be assumed if they do not respond within a specified timeframe, but Section 4(f) explicitly requires their written concurrence. It is recommended that transportation officials share this guidance with the SHPOs and THPOs in their States so that these officials fully understand the implication of their concurrence in the Section 106 determinations and the reason for requesting written concurrence.

**Question C. Certain Section 106 programmatic agreements (PAs) allow the lead agency to assume the concurrence of the SHPO and/or THPO in the determination of "no adverse effect" or "no historic properties affected" if response to a request for concurrence is not received within a period of time specified in the PA. Does such concurrence through non-response, in accordance with a written and signed Section 106 PA, constitute the "written concurrence" needed to make a *de minimis* finding?**

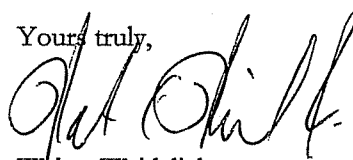
**Answer:** In accordance with the provisions of a written and signed programmatic agreement, if the SHPO and/or THPO does not respond to a request for concurrence in the Section 106 determination within the specified time, the non-response together with the written agreement, will be considered written concurrence in the Section 106 determination that will be the basis of the *de minimis* finding by FHWA or FTA.

FHWA or FTA must inform the SHPOs and THPOs who are parties to such PAs, in writing, that a non-response that would be treated as a concurrence in a "no adverse effect" or "no historic properties affected" determination will also be treated as the written concurrence for purposes of the FHWA or FTA *de minimis* use finding. It is recommended that this understanding of the parties be documented by either appending the written notice to the existing PA, or by amending the PA itself.

According to 2005 Guidance, by transmittal of this letter, the FHWA is notifying your office of FHWA's intent to make the Section 4(f) *de minimis* use finding for properties where a determination of no historic properties affected (no effect), or no adverse effect have been concurred in by your office or when your office has not replied within the appropriate timeframe with written concurrence.

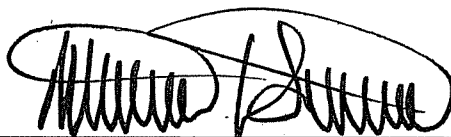
By the following signature, the SHPO acknowledges it has been notified of the intent of the FHWA to make a *de minimis* finding based on Section 106 determinations of effect for specific properties.

Yours truly,



Walter Waidelich  
Division Administrator

Concurrence:



~~Wilson Martin~~, State Historic Preservation Officer

7/19/07

Date

**Matthew T. Seddon, RPA  
Deputy State Historic  
Preservation Officer**



State of Utah

JON M. HUNTSMAN, JR.  
*Governor*

GARY R. HERBERT  
*Lieutenant Governor*

## DEPARTMENT OF TRANSPORTATION

JOHN R. NJORD, P.E.  
*Executive Director*

CARLOS M. BRACERAS, P.E.  
*Deputy Director*

26 June 2007

Mr. Cory Jensen  
National Register Coordinator, and  
Dr. Matthew Seddon  
Deputy State Historic Preservation Officer  
Utah Division of State History  
300 Rio Grande  
Salt Lake City, Utah 84101-1182

RE: Project No. STP-HPP-TI-0092(8)0; SR-92 Lehi to Highland. **Determinations of Eligibility. Request for Concurrence.**

Dear Mr. Jensen and Dr. Seddon:

The Federal Highway Administration (FHWA), and the Utah Department of Transportation (UDOT) are preparing to undertake the subject federal-aid project. The UDOT has made an effort to consider the effects of this undertaking on any historic or archaeological resources that could be eligible for the state or national registers, and to afford the Utah State Historic Preservation Office (USHPO) an opportunity to comment on the undertaking, as outlined in Section 106 of the National Historic Preservation Act of 1966, as amended, and U.C.A. 9-8-404. Please review this letter and, providing you agree with the determinations contained herein, sign and date the signature line at the end of this letter.

The project is located along SR-92 between I-15 and points just east of SR-146 in Highland, Utah. An archaeological and architectural resources evaluation was completed by SWCA along SR-92. The Area of Potential Effect (APE) was consisted of a corridor measuring approximately 300 feet wide (91 m), 150 feet (45 m) on either side of the centerline. The APE also included two short corridors along side streets. This APE includes 335 acres. Some of the APE has been inventoried in the past, and was only subject to reconnaissance or "windshield" survey for this project. This area totals 201 acres of the total 335 acres

Nine historic architectural properties and eight archaeological sites were documented within the APE. The nine historic architectural properties are listed in Table 1. All nine are residential properties. Of the nine properties, one received an A SHPO rating, and six received B SHPO ratings. These seven properties are recommended eligible to the National Register of Historic Places under criterion C. The remaining two properties received C SHPO ratings, and are not eligible for inclusion in the National Register under any criteria.

Table 1. Historic architectural properties

Address	Year Built	Type/Style	SHPO Rating	NRHP
5615 W. 11000 N.	1920	Bungalow	C	Not eligible
5059 W. 11000 N.	1960	Split Level/Ranch-Rambler	B	Eligible under C
5043 W. 11000 N.	1960	Ranch-Rambler	B	Eligible under C
5027 W. 11000 N.	1960	Split Level/Ranch-Rambler	B	Eligible under C
5011 W. 11000 N.	1960	Ranch-Rambler/Late 20 <sup>th</sup> Century-Other	B	Eligible under C
4875 W. 11000 N.	1960	Ranch-Rambler/Contemporary	B	Eligible under C
4851 W. 11000 N.	1960	Ranch-Rambler/Contemporary	A	Eligible under C
4774 W. 11000 N.	1955	Ranch-Rambler	B	Eligible under C
4361 W. 11000 N.	1920	Cross-Wing/Victorian & Late 20 <sup>th</sup> -Century	C	Not eligible

The eight archaeological sites include the Murdock Canal (42UT947), the Bull River Ditch (42UT973), the Utah Southern Railroad/Union Pacific Railroad (42UT1029), the Pleasant Grove Ditch (42UT1133), the Mitchell Ditch (42UT1137), American Fork Canyon Ditch (42UT1547), an historic residential site (42UT1317) and a prehistoric lithic scatter (42UT946).

Of these, five have been previously determined to be eligible for nomination to the National Register of Historic Places. The Murdock Canal, the Utah Southern Railroad/Union Pacific Railroad, the Pleasant Grove Ditch, and the Mitchell Ditch have all been previously determined eligible. As a result of this project, the American Fork Canyon Ditch is also determined eligible, under criterion A and C.

Sites previously determined not eligible include the prehistoric lithic scatter (42UT946) and the Bull River Ditch and the historic residential site (42UT1317).

At this time, specific project plans have not been finalized, and are unavailable to assist in findings of effect. Therefore, UDOT requests your concurrence on these 17

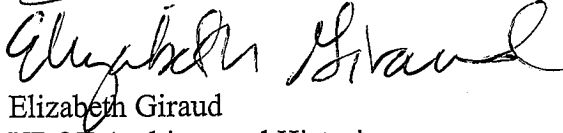
determinations of eligibility. UDOT will request concurrence on finding of effect, based on these determinations at a future time.

Thank you for your time with this review. Should you need additional information or have any questions, please contact me at 801-227-8062 or [jasonbright@utah.gov](mailto:jasonbright@utah.gov).

Sincerely,



Jason Bright  
Region 3 NEPA/NHPA Specialist



Elizabeth Giraud  
UDOT Architectural Historian

Enclosures

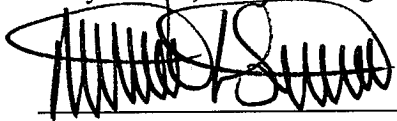
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I concur with the **determinations of eligibility** for UDOT Project No. STP-3014(1)3; SR-92 Lehi to Highland; in accordance with Section 106 of the NHPA and U.C.A. 9-8-404.



Cory Jensen, National Register Coordinator

8/1/07  
\_\_\_\_\_  
Date



Matthew Seddon, Deputy SHPO

8/1/07  
\_\_\_\_\_  
Date



State of Utah

JON M. HUNTSMAN, JR.  
*Governor*

GARY R. HERBERT  
*Lieutenant Governor*

DEPARTMENT OF TRANSPORTATION

JOHN R. NJORD, P.E.  
*Executive Director*

CARLOS M. BRACERAS, P.E.  
*Deputy Director*

Received

AUG 26 2008

USHPO

07-0159

August 13, 2008

Mr. Cory Jensen  
National Register Coordinator and Architectural Historian  
Utah Division of State History  
300 Rio Grande  
Salt Lake City, UT 84101-1182

RE: UDOT Project No. STP-HPP-TI-0092(8)0; SR-92 Lehi to Highland, Utah County, Utah.  
**Addendum Determination of Eligibility and Finding of No Adverse Effect.**

Dear Mr. Jensen:

The Federal Highway Administration (FHWA) and Utah Department of Transportation (UDOT) are proposing to widen and improve SR-92 from I-15 to SR-146 at the mouth of American Fork Canyon through portions of Lehi and Highland in Utah County, Utah (see enclosed map).

In accordance with Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. §470 et seq., and Utah Code Annotated (U.C.A.) §9-8-404, the FHWA, in partnership with the UDOT, is taking into account the effects of this undertaking on historic properties, which could be eligible for the State or National registers, located within the project Area of Potential Effect (APE) and to afford the Utah State Historic Preservation Office (USHPO) an opportunity to comment on the undertaking and its effects. Additionally, this submission is in compliance with Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. § 138 (as amended) and 49 U.S.C. § 303 (as amended).

This letter serves as an addendum to previously submitted Determinations of Eligibility (see letter dated June 26, 2007) and contains the Findings of Effect (for both Section 106 and Section 4(f)) for all historic properties eligible for inclusion on the National Register of Historic Places (NRHP) located within the APE for this project.

The APE consists of a linear corridor along SR-92 between I-15 and SR-146, measuring approximately 9.2 miles long and 300 feet wide. Project design changes to the original APE required additional pedestrian survey along short perpendicular corridors for archaeological resources as these additional areas were not covered by the original survey. The APE has been surveyed in its entirety resulting in the identification of 10 archaeological sites and 9 architectural properties. Of these, 5 archaeological sites and 7 architectural properties are considered eligible to the NRHP. No known traditional cultural properties or paleontological resources are located within the APE. The Findings of Effects are provided in Table 1 for archaeological resources and in Table 2 for architectural properties (see enclosed figures for detail).

## ARCHAEOLOGICAL RESOURCES

Table 1. Findings of Effect for Archaeological Resources.

Site	Name or Description	NRHP Eligibility	Finding of Effect	Warrants preservation in place?	Section 4(f) Use
42UT947	Provo Reservoir Canal/ Murdock Canal	Eligible	No Adverse Effect	Yes	<i>de minimis</i>
42UT964	Prehistoric lithic scatter	Not eligible	No Historic Properties Affected	No	None
42UT973	Bull River Ditch	Not eligible	No Historic Properties Affected	No	None
42UT974	Fox Ditch	Not eligible	No Historic Properties Affected	No	None
42UT1029	Utah Southern/Union Pacific Railroad	Eligible	No Adverse Effect	Yes	<i>de minimis</i>
42UT1133	Pleasant Grove Ditch	Eligible	No Adverse Effect	Yes	<i>de minimis</i>
42UT1317	Historic residential site	Not eligible	No Historic Properties Affected	No	None
42UT1547	American Fork Ditch/ American Fork Canyon Ditch	Eligible	No Adverse Effect	Yes	<i>de minimis</i>
42UT1594	Historical debris scatter	Not eligible	No Historic Properties Affected	No	None
42UT1605	Lehi Ditch/Lehi Canal	Eligible	No Adverse Effect	Yes	<i>de minimis</i>

**Description of Effects:** For the canals, existing culverts located at crossings with SR-92 will be replaced. For the railroad, the crossing will be closed and the profile lowered to accommodate a future grade-separated crossing associated with the UTA light rail. For all archaeological sites, construction will not substantially impact or alter the sites as a whole or any of their character-defining features for which the overall site was determined eligible for the NRHP. Thus, the proposed project will result in a finding of **No Adverse Effect** and a Section 4(f) *de minimis* impact.

## ARCHITECTURAL PROPERTIES

Table 2. Findings of Effect for Architectural Properties.

Address	Date	Style	Eligibility/ SHPO Rating	Finding of Effect	Section 4(f) Use
5615 W. 11000 N	1920	Bungalow	Not Eligible/C	No Historic Properties Affected	None
5059 W. 11000 N.	1960	Split Level/Ranch-Rambler	Eligible/B	No Adverse Effect	<i>de minimis</i>
5043 W. 11000 N.	1960	Ranch-Rambler	Eligible/B	No Adverse Effect	<i>de minimis</i>
5027 W. 11000 N.	1960	Split Level/Ranch-Rambler	Eligible/B	No Adverse Effect	<i>de minimis</i>
5011 W. 11000 N.	1960	Ranch-Rambler/Late 20 <sup>th</sup> Century-Other	Eligible/B	No Adverse Effect	<i>de minimis</i>
4875 W. 11000 N.	1960	Ranch-Rambler/Contemporary	Eligible/B	No Adverse Effect	<i>de minimis</i>
4851 W. 11000 N.	1960	Ranch-Rambler/Contemporary	Eligible/B	No Adverse Effect	<i>de minimis</i>
4774 W. 11000 N.	1955	Ranch-Rambler	Eligible/B	No Adverse Effect	<i>de minimis</i>
4361 W. 11000 N.	1920	Cross-Wing/Victorian & Late 20 <sup>th</sup> -Century	Not Eligible/C	No Historic Properties Affected	None

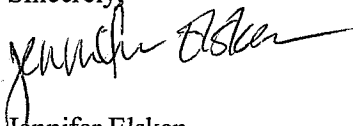
**Description of Effects:** Minor strip takes of 8-10 feet will be required across the front of all eligible properties. Partial right-of-way acquisitions ranging from 580-1580 square feet will be required of four properties. Easements for utility lines may be needed. Temporary construction easements will be needed in driveway areas. For all properties, the alignment will avoid historic structures and any associated contributing features. Thus, the proposed project will result in a finding of **No Adverse Effect** and a Section 4(f) *de minimis* impact.

To summarize, the project will result in a finding of **No Adverse Effect** for 5 archaeological sites and 7 architectural properties and Section 4(f) *de minimis* impacts; and a finding of **No Historic Properties Affected** for 5 archaeological sites and 2 architectural properties and no Section 4(f) uses. Therefore, the Finding of Effect for the proposed UDOT Project Number STP-HPP-TI-0092(8)0; SR-92 Lehi to Highland, Utah County, is **No Adverse Effect**.

Enclosed please find the addendum archaeological inventory report and IMACS forms, prepared by SWCA Environmental Consultants.

Please review this document and, providing you agree with the findings contained herein, sign and date the signature line at the end of this letter. Should you have any questions or need additional information, please feel free to contact me at (801) 227-8062 or [jelsken@utah.gov](mailto:jelsken@utah.gov).

Sincerely,



Jennifer Elsken  
NEPA/NHPA Specialist  
UDOT Region 3



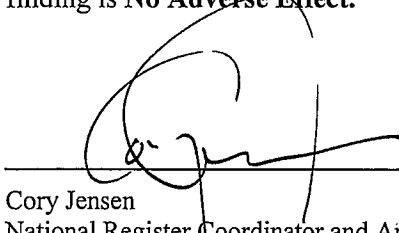
Elizabeth Giraud  
Architectural Historian  
UDOT

Enclosures

cc: Phil Huff, UDOT R3  
Rich Crosland, UDOT R3

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Regarding UDOT Project Number STP-HPP-TI-0092(8)0; SR-92 Lehi to Highland, Utah County, I concur with the findings of effect, submitted to the Utah State Historic Preservation Office in accordance with Section 106 of the NHPA and U.C.A. 9-8-404, which states that the UDOT has determined that the finding is **No Adverse Effect**.



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Cory Jensen  
National Register Coordinator and Architectural Historian

Date

8/27/08